

By: Hancock

H.B. No. 3161

A BILL TO BE ENTITLED

AN ACT

relating to limited purpose subsidiary life insurance companies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 841, Insurance Code, is amended by adding a new Subchapter P to read as follows:

Subchapter P.

Limited Purpose Subsidiary Life Insurance Companies

§841.801. Purpose. The purpose of this subchapter is to authorize the establishment of domestic Limited Purpose Subsidiary Life Insurance Companies ("Limited Purpose Company" or "LPS") in order to allow that such Limited Purpose Companies may issue securities and otherwise access financial markets and alternative sources of capital through securitizations and other transactions.

§841.802 Definitions. For purposes of this subchapter, the following definitions shall apply:

(1) "Affiliated companies" means:

(A) domestic life insurance companies that are directly or indirectly wholly owned subsidiaries of the same holding company; or

(B) controlled persons.

(2) "Ceding insurer" means either a domestic life insurance company that is the parent of the Limited Purpose Subsidiary or an affiliated company of a Limited Purpose Subsidiary and that cedes risk to the LPS pursuant to a reinsurance contract.

1 (3) "Commissioner" means the insurance commissioner.

2 (4) "Controlled Person" means a person organized or
3 authorized to do business under the laws of this State who is
4 controlled directly or indirectly by a holding company.

5 (5) "Guaranty" means an agreement to pay specified
6 obligations of the limited purpose subsidiary by a holding company
7 or affiliated company of the limited purpose subsidiary approved by
8 the commissioner that is not a ceding insurer and the guarantor has
9 sufficient equity, less the equity of all ceding insurers that are
10 subsidiaries of the guarantor, to satisfy the agreement during the
11 life of the guaranty.

12 (6) "Holding Company" means a person who directly or
13 indirectly controls an insurer.

14 (7) "Insurance securitization" or "securitization" means a
15 transaction or a group of related transactions, which may include
16 capital market offerings, that are effected through related risk
17 transfer instruments and facilitating administrative agreements
18 where all or part of the result of such transactions is used to fund
19 the LPS's obligations under a reinsurance contract with a ceding
20 insurer and by which proceeds are:

21 (A) obtained by an LPS, directly or indirectly,
22 through the issuance of securities by the LPS or any other person;
23 or

24 (B) provided through one or more letters of credit or
25 other assets for the benefit of the LPS, which the commissioner
26 authorizes the LPS to treat as admitted assets for purposes of the
27 LPS's annual statement where all or any part of such proceeds,

1 letters of credit, or assets, as applicable, is used to fund the
2 LPS's obligations under a reinsurance contract with a ceding
3 insurer.

4 (8) "Insurer" for purposes of this chapter, means a domestic
5 life insurance company organized under chapter 841.

6 (9) "Letters of credit" means clean, unconditional,
7 irrevocable letters of credit issued or confirmed by a qualified
8 United States financial institution as defined in section
9 492.104(b)(2)(C) of this code.

10 (10) "LPS" means a limited purpose subsidiary life
11 insurance company organized pursuant to this subchapter, that is
12 wholly owned by a life insurance company or an affiliated company
13 and that is issued a certificate of authority by the commissioner
14 pursuant to this chapter.

15 (11) "LPS security" means:

16 (A) A security issued by an LPS; or

17 (B) A security issued by a third party, the proceeds of
18 which are obtained directly or indirectly by an LPS.

19 (12) "Management" means the board of directors, managing
20 board, or other individual or individuals vested with overall
21 responsibility for the management of the affairs of the LPS.

22 (13) "Material" means a transaction or series of
23 transactions involving amounts equal to or exceeding 3 percent of
24 the LPS's admitted assets less any letters of credit, guaranties
25 and intangible assets included as an admitted asset of the LPS.

26 (14) "Organizational documents" means an LPS's articles of
27 incorporation and bylaws.

1 (15) "Organizing company" means the company that organizes
2 an LPS pursuant to this subchapter.

3 (16) "Parent" means a person, as defined in Section
4 823.002(7) of this code, that directly or indirectly through one or
5 more intermediaries wholly owns or is an affiliated company of an
6 LPS.

7 (17) "Person" has the same meaning as defined in Section
8 823.002(7) of this code.

9 (18) "Reinsurance contract" means a contract between an LPS
10 and a ceding insurer pursuant to which the LPS agrees to provide
11 reinsurance to the ceding insurer for risks.

12 (19) "Risk" means risks associated with life insurance
13 policies and annuity contracts written by the ceding insurer or
14 assumed by the ceding insurer from an affiliated company which were
15 written by the affiliated company and for which the ceding insurer
16 holds statutory reserves for those policies.

17 (20) "Security" means the same as defined in Article
18 581-4(a), Vernon' Civil Statutes, and shall also include any form
19 of debt obligation, surplus note, derivative, or other financial
20 instrument that the commissioner designates as a "security" for
21 purposes of this chapter.

22 (21) "Surplus note" means an unsecured subordinated debt
23 obligation.

24 §841.803. Organizational Documents of a LPS.

25 (a) Either a wholly owned domestic insurer authorized to
26 transact the business of insurance pursuant to chapter 841 or an
27 affiliated company organized or authorized to conduct business

1 under the laws of this State may organize a domestic limited purpose
2 subsidiary life insurance company pursuant to the provisions of
3 this chapter.

4 (b) The limited purpose subsidiary life insurance company
5 may reinsure risks of the organizing company, reinsure risks of
6 affiliated companies, and access alternative forms of financing.

7 (c) An LPS's organizational documents shall limit the LPS's
8 authority to transact the business of reinsurance to reinsure only
9 the risks of a ceding insurer and shall state that the LPS shall not
10 otherwise engage in the business of insurance.

11 (d) An LPS's organizational documents shall provide that
12 the LPS shall always be either wholly owned by a domestic insurer
13 authorized to transact the business of insurance pursuant to
14 chapter 841 or an affiliated company organized or authorized to do
15 business under the laws of this State.

16 §841.804. Certificate of Authority Required. No LPS shall
17 do any reinsurance business in this state unless it obtains from the
18 commissioner a certificate of authority pursuant to this rule.

19 §841.805. Application for Certificate of Authority. (a) To
20 obtain a charter for a domestic LPS, the incorporators must pay to
21 the department the charter fee in an amount determined under
22 Chapter 202 and file with the department:

23 (1) An application for charter on the form and containing
24 the information prescribed by the commissioner;

25 (2) the company's articles of incorporation;

26 (3) an affidavit made by two or more of the incorporators
27 that states that:

1 (A) the minimum capital and surplus requirements of
2 this subchapter are satisfied;

3 (B) the capital and surplus are the bona fide property
4 of the company;

5 (C) the information in the articles of incorporation
6 is true and correct;

7 (4) Submit any other statements or documents required by the
8 commissioner to evaluate the LPS's application for a certificate of
9 authority.

10 §841.806. Investment by Organizing Company. If the
11 organizing company is a domestic life insurance company, it may
12 invest funds from its surplus in a limited purpose subsidiary life
13 insurance company organized pursuant to this section.

14 §841.807. Officers and Directors. The organizing company's
15 officers and directors may serve as officers and directors of a
16 limited purpose subsidiary life insurance company organized
17 pursuant to this section.

18 §841.808. Issuance of Certificate of Authority. (a) The
19 commissioner may issue a certificate of authority to an LPS,
20 authorizing the LPS to transact reinsurance business as an LPS in
21 this state based on the findings required in Section 841.061 of this
22 code.

23 (b) In conjunction with the issuance of a certificate of
24 authority to an LPS, the commissioner may issue an order that
25 includes any provisions, terms, and conditions regarding the
26 organization, licensing, and operation of the LPS that the
27 commissioner deems appropriate and that are not inconsistent with

1 the provisions of this chapter.

2 §841.809. Scope of Certificate of Authority. (a) An LPS
3 that has been issued a certificate of authority may reinsure only
4 the risks of a ceding insurer.

5 (b) An LPS shall not otherwise engage in the business of
6 insurance.

7 (c) An LPS may purchase reinsurance to cede the risks
8 assumed under a reinsurance contract.

9 (d) A limited purpose subsidiary life insurance company
10 organized pursuant to this section shall be deemed to be licensed to
11 transact the business of reinsurance for the purposes of section
12 492.051, but may only reinsure risks of its affiliated companies.

13 §841.810. Capital and Surplus. (a) An LPS shall not be
14 issued a certificate of authority unless it possesses and
15 thereafter maintains unimpaired paid-in capital and surplus of not
16 less than the amounts required by Section 841.054(a) of this code.

17 §841.811. Dividends and Distributions. An LPS may pay
18 dividends and distributions that do not decrease the capital of the
19 LPS below the minimum capital and surplus amount required by
20 section 841.810.

21 §841.812. Reports of Securitizations. An LPS shall provide
22 the commissioner with a copy of a complete set of executed
23 documentation of an insurance securitization no later than 45 days
24 after the closing on the transactions for such securitization.

25 §841.813. Foreclosure on Collateral. An LPS shall notify
26 the commissioner immediately of any action by a ceding insurer or
27 any other person to foreclose on or otherwise take possession of

1 collateral provided by the LPS to secure any obligation of the LPS.

2 §841.814. Filing Reports with the National Association of
3 Insurance Commissioners. Notwithstanding section 802.051 of this
4 code, or any other law, an LPS shall not be required to file any
5 report, notice, or other document with the National Association of
6 Insurance Commissioners unless required by the commissioner.

7 §841.815. Securitization Agreements. The LPS
8 securitization, the security-offering memorandum or other document
9 issued to prospective investors regarding the offer and sale of a
10 surplus note or other security shall include a disclosure that all
11 or part of the proceeds of such insurance securitization will be
12 used to fund the LPS's obligations to the ceding insurer.

13 §841.816. Admitted assets.

14 (a) Admitted assets of a limited purpose subsidiary life
15 insurance company shall include assets approved by the commissioner
16 which shall be deemed to be, and reported as, admitted assets of the
17 LPS.

18 (b) In addition to the investments authorized under
19 Subchapters C, and D of chapter 425 of this Code and notwithstanding
20 any other law, admitted assets of the LPS shall include proceeds
21 from a securitization, premium and other amounts payable by a
22 ceding insurer to the LPS, letters of credit, guaranties of a
23 holding company, guaranties of an affiliated company,, and any
24 other assets approved by the commissioner, which shall be deemed to
25 be, and reported as, admitted assets of the LPS.

26 §841.817 Securities.

27 (a) An LPS security shall not be subject to regulation as an

1 insurance or reinsurance contract.

2 (b) An investor in such a security or a holder of such a
3 security shall not be considered to be transacting the business of
4 insurance in this state solely by reason of having an interest in
5 the security.

6 (c) The underwriter's placement or selling agents and their
7 partners, commissioners, officers, members, managers, employees,
8 agents, representatives, and advisors involved in an insurance
9 securitization by an LPS shall not be considered to be insurance
10 producers or brokers or to be conducting business as an insurance or
11 reinsurance company or as an insurance agency, brokerage,
12 intermediary, advisory, or consulting business solely by virtue of
13 their underwriting activities in connection with such
14 securitization.

15 §841.818. Permitted Reinsurance.

16 (a) An LPS may reinsure, pursuant to a reinsurance contract,
17 only the risks of a ceding insurer.

18 (b) Unless otherwise approved in advance by the
19 commissioner, an LPS may not assume or retain exposure to
20 reinsurance losses for its own account that are not funded by one or
21 more of the following:

22 (1) Proceeds from a securitization;

23 (2) Premium and other amounts payable by the ceding
24 insurer to the LPS pursuant to the reinsurance contract;

25 (3) Letters of credit;

26 (4) Guaranties of a holding or affiliated company; or

27 (5) Any return on investment of the items in

1 subsections (1) or (2).

2 (c) An LPS may cede risks assumed through a reinsurance
3 contract to one or more reinsurers through the purchase of
4 reinsurance, subject to the prior approval of the commissioner.

5 (d) An LPS may enter into contracts and conduct other
6 commercial activities related or incidental to and necessary to
7 fulfill the purposes of a reinsurance contract, an insurance
8 securitization, and this chapter. Such contracts and activities
9 may include but are not limited to:

10 (1) entering into reinsurance contracts;

11 (2) issuing LPS securities;

12 (3) complying with the terms of these contracts or
13 securities;

14 (4) entering into trust, guaranteed investment
15 contract, swap, or other derivative, tax, administration, services
16 reimbursement, or fiscal agent transactions;

17 (5) complying with trust indenture, reinsurance, or
18 retrocession; or

19 (6) entering into other agreements necessary or
20 incidental to effect a reinsurance contract or an insurance
21 securitization in compliance with this chapter.

22 (e) Unless otherwise approved in advance by the
23 commissioner, a reinsurance contract shall not contain any
24 provision for payment by the LPS in discharge of its obligations
25 under the reinsurance contract to any person other than the ceding
26 insurer or any receiver of the ceding insurer.

27 §841.825. Other Laws Not Applicable. The deposit

1 requirements in subchapter H of this chapter shall not apply to an
2 LPS.

3 SECTION 2. This Act shall be effective January 1, 2012.